

(1979) 07 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Miscellaneous Appeal No. 132 of 1974

Rama Shanker

APPELLANT

Vs

Smt. Rama Beti alias Sharda alias Kamala

RESPONDENT

Date of Decision : 10-07-1979

Acts Referred:

Guardians and Wards Act, 1890 — Section 25, 47
Penal Code, 1860 (IPC) — Section 497

Citation : (1979) WLN 219

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.C. Jain, J.—This Is an appeal u/s 47 of the Guardians and Wards Act against the order of the District Judge, Jodhpur, dated 30-3-74 whereby the petition of the appellant u/s 25 of the Guardians and Wards Act for the Custody of four minor children was dismissed and the minor children were allowed to remain in the custody of their mother non-petitioner-respondent.

2. The petitioner sought the custody of the minor children on the ground that the non-petitioner is not leading a chaste life and there would be evil influence on impressionable minds of the children. It was also stated that the petitioner would be in a better position to look after the welfare of the children so the children may be given to the custody of the petitioner.

3. The petition was resisted by the non-petitioner in which the (allegation regarding leading adulterous life with Krishna Kant was denied and it was also denied that it would be in the interest of the children that they may live with the petitioner. The parties led evidence before the learned District Judge, but after hearing both the parties, the learned District Judge felt that it is in the welfare of the children that they may continue to live with their mother.

4. During the pendency of the appeal one of the children, namely, Kumari Vimla,

presented herself in person and expressed her willingness to reside with her mother. It appears that she now become major. As such the application so far her custody is concerned, has become infructuous.

5. I have heard Shri M L. Kala on behalf of the appellant and perused the record of the case. None appears on behalf of the respondent.

6. On behalf of the appellant it is urged that the respondent was having an adulterous union with Krishna Kant and Krishna Kant was prosecuted for adultery and he was convicted for the same u/s 497, I. P. G. and his conviction was upheld in appeal, so considering the conduct of the non-petitioner it would be in the interest of the minor children namely, Rajendra, Pushpa and Anand Kumar that they may not live in the company or association of their mother.

7. Having bestowed my earnest consideration to the submissions of the learned Counsel for the appellant, in the circumstances of the case, I am of the opinion that the prayer of the appellant cannot be accepted. The learned District Judge on the basis of the evidence on record, did not believe the petitioner's evidence regarding leading of an adulterous life by the non-petitioner. However, the learned District Judge proceeded to consider the question of welfare of the minors even on the assumption that the non-petitioner is leading unchaste life and there may be evil influence on the mind of the children. He weighed the question of evil influence as against the care and affection of the mother and on that basis held that it is in the welfare of the children that they may continue to remain in the custody of their mother. Whatever the learned Counsel has stated at the bar, even if it taken to be true, still the question would remain as to whether it would be in the interest and welfare of the minors that they may be given to the custody of the petitioner-appellant ? It is conceded before me that the minor children are not willing to live with the appellant. They have now grown up in age, Rajendra is about 18 years, Pushpa is about 14 years and Anand Kumar is about 12 years at present. The minor children are living with their mother since after the birth of her youngest son Anand Kumar for more than ten years. It is difficult to hand over the custody of the minor children, who are now grown up in age, against their will. Wishes of the minor children cannot be ignored. It is not necessary to send for them and to ascertain their wishes in view of the statement made by the learned Counsel for the appellant at the Bar that the minor children are not willing to live with the petitioner. In view of what I have considered above, the present appeal can not succeed.

8. It the result the appeal is dismissed. The parties shall bear their own costs.